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Paul Shanoski, Senior Attorney
Office of Petitions, USPTO

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PATENT APPLICATION OF
JOHN CHOATE

APPLICATION NO: 10/780,476
FILED: FEBRUARY 16, 2004

CONFIRMATION NO: 1542
ART UNIT: 3736
EXAMINER: J. HOEKSTRA

FOR: Apparatus that improves discovery of cancer mass, and reduces inflammation - onset of symptoms of carpal tunnel syndrome or arthritis - tactile deficit of fingers, and increases discovery of foreign mass in breast and other self examinations.

Reply to Oct 26 2007 Decision on Petition To Withdraw Holding of Abandonment 37 CFR 1.181

1. I incorporate the citation to MPEP 711.03 and 37 CFR 1.181 and all information in my petitions filed on October 1, 2007, including the certified mailing receipt #_7007 0220 0002 5011 5817 of 12 April 2007, the 12 April 2007 Response to office action of 13 October 2006, with \$510 fee paid to extend the time 3 months to 13 April 2007, and the certification "I certify On April 12, 2007, I mailed the Response to the October 6, 2006 to the USPTO, by first class postage prepaid certified mail. I attach to this fax the certified mail receipt. Signed John Choate" and other explanations in the Petition of October 1, 2007.

2. The Decision quotes, among others, 37 CFR 1.8 - Sec. 1.8 Certificate of mailing or transmission. (a)(1)(ii) The correspondence includes a certificate ... But the decision says the certificate was not in the electronic record of April 16, 2007, etc.

3. The operable word "includes" is a transitive verb. Websters New World Dictionary (pg 683, 1991 3rd college Ed) gives the following for *Includes*: "1. to shut up on in, enclose 2 to have as part of a whole; contain; comprise [the cost includes taxes, 3 to consider as part of a whole; take into account; put in a total, category, etc [to be included as a candidate]."
I submit the correspondence in the file "includes" a certificate of mailing (submitted October 1, 2007 - when the deficiency was known), which is factually truthful and accurate, as it is to be considered as part of a whole, take into account, as in the definition.

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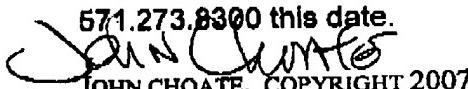
PAGE 22 * RCV'D AT 12/14/2007 7:49:26 PM [Eastern Standard Time] * SR:USPTO-EXRF-6/33 * DNI:2738300 * CSID:7032412343 * DURATION (mm:ss):02:00

There is nothing in the mailing rule that the certificate need be simultaneous, (at page 1251 ibid) "occurring, done, existing, etc, together or at the same time, syn. Contemporary." It just has to be truthful, and be done.

That Title 37 CFR can require and knows the definition of "simultaneous" occurs 25 times in the regulations.¹ That the Patent office uses "simultaneous" is given 3 times in the MPEP.² Those deal with service, complaints, etc. There is no simultaneous requirement in 711.03. This means it (the October 1, 2007 certification) can be included with the correspondence so as to comply with the Rules (711.03).

4. I reserve the option to petition under 37 C.F.R. 1.137(a) and (b), but I have complied with the rules, just not simultaneously.

I Certify I am faxing this petition and supporting documents to Mail Stop: Issue Fee Commissioner For Patents [P.O. Box 1450 Alexandria, VA 22313-1450] Or faxed to: 571.273.8300 this date.


JOHN CHOATE, COPYRIGHT 2007

I CERTIFY I FAXED THIS PETITION AS DESCRIBED. JOHN CHOATE
PO Box 9949, ARLINGTON VA 22219-9949
703-241-2343
DECEMBER 14, 2007

¹ Here are some examples of the use of simultaneous, all in TITLE 37--
PATENTS, TRADEMARKS, AND COPYRIGHTS

Sec. 262.2 Definitions.

For purposes of this part, the following definitions shall apply:
(a) ... if a service transmitted one hour of programming to 10 simultaneous listeners, ...
... (b) Broadcast Simulcast means
(1) A simultaneous Internet transmission ...

Sec. 380.3 (a)(1) ... including simultaneous digital audio retransmissions ...
(a)(2) (1)... including simultaneous digital audio ...
(ii) including simultaneous digital audio

Sec. 261.2 Definitions.

... programming to 10 simultaneous listeners ...
... programming to 10 simultaneous listeners ...

Sec. 261.3 ... (a)(1) ... including simultaneous Internet ...
(2)(i) ... For simultaneous Internet ...

² MPEP

R 248 - 10.135 Service of Complaint (c) ... may serve simultaneously with the complaint ...

R-268 11.10 Restrictions on practice in patent matters ... (b) (4) ...unless the two occur simultaneously.

R-294 41.106 Filing and Service. (e) Service (1) ... must be served simultaneously ...